REMARKS/ARGUMENTS

This Reply is filed in response to the new, non-final Official Action of September 3, 2008, the Official Action being issued following a Notice of Panel Decision from Pre-Appeal Brief Review re-opening prosecution of the present application. The new, non-final Official Action rejects Claims 1-4, 10-13, 19-22 and 28-31 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,223,291 to Puhl et al., in view of U.S. Patent No. 7,346,168 to Chou et al., and further in view of U.S. Patent Application Publication No. 2004/0003266 to Moshir et al. The Official Action then rejects Claims 5, 14, 23 and 32 as being unpatentable over Puhl in view of Chou and Moshir, and further in view of U.S. Patent Application Publication No. 2004/0176080 to Chakravorty et al.; rejects Claims 6, 7, 15, 16, 24, 25, 33 and 34 as being unpatentable over Puhl in view of Chou, Moshir and Chakravorty, and further in view of U.S. Patent Application Publication No. 2003/0147369 to Singh et al.; and rejects Claims 8, 9, 17, 18, 26, 27, 35 and 36 as being unpatentable over Puhl in view of Chou, Moshir and Singh. As explained below, Applicants respectfully submit that the claimed invention is patentably distinct from Puhl, Chou, Moshir, Chakravorty and Singh, taken individually or in any proper combination. In view of the remarks presented herein, Applicants respectfully request reconsideration and allowance of all of the pending claims of the present application.

A. Note regarding Claim Construction

Initially, Applicants note that in the present Official Action, the Office has failed to provide Applicants with a sufficient claim construction or interpretation of the cited references so as to enable the Applicants to effectively reply. *See* MPEP §§ 706, 706.07. In this regard, as has been recognized by the Board of Patent Appeals and Interferences (BPAI), "The Examiner must make specific findings as to claim construction." *Ex parte* Blankenstein et al., Appeal No. 2007-2872, Application No. 10/116,312 (BPAI Aug. 26, 2008); and *see* Gechter v. Davidson, 116 F.3d 1454 (Fed. Cir. 1997) (emphasis added). In the instant case, other than quoting or paraphrasing Applicants' claim language with annotated citations to figures, or column and line numbers of the cited references, the Office provides no finding or other explanation regarding Applicants' claims, the cited references, or the application of the cited references to Applicants'

claims.

Applicants further submit that not only does the Office merely quote Applicants' claim language with annotated citations to the cited references; the Office Action fails to address various ones of the claim recitations, and misinterprets others of the claim recitations. As to independent Claim 1 (and similarly independent Claims 10, 19 and 28, for example, the Official Action states as follows:

> *Puhl discloses a system, a method, a computer readable medium, an apparatus respectively for downloading pushed content comprising; a terminal comprising a processor configured to receive download content and has a digital signature. The processor is implicitly stated by the prior art. Wherein the processor is configured to authenticate the service loading content based upon the digital signature, and if the service loading content is authenticated, pulling the download content to the terminal and wherein the processor is configured to authenticate the service loading content and pulling the downloading content (col. 13, lines 30-46; col. 13, lines 47-67) and independent of interaction for a user of the terminal (col. 8, lines 2-4, lines 10-12).*

Official Action of Sep. 3, 2008, page 3 (emphasis added). However, independent Claim 1 does not recite that its processor is "configured to receive download content and has a digital signature," but instead recites that its processor is "configured to receive service loading content that identifies download content and has a digital signature." And nowhere does the Official Action cite Puhl or any of the other cited references for disclosing a terminal receiving service loading content that identifies download content and has a digital signature.

Independent Claim 1 recites a terminal with a processor configured to pull download content in "response to receiving the service loading content." Nowhere, however, does the Official Action address the pulling of download content being in response to receiving service loading content.

Moreover, the Official Action concedes that "Puhl does not explicitly disclose receiving authenticating service loading content." Official Action of Sep. 3, 2008, page 3. Although independent Claim 1 separately recites receiving and service loading content, independent Claim 1 does not in fact recite "receiving authenticating service loading content," as alleged. Applicants are quite perplexed as to the construction of the claims being applied to the claims, as well as how the cited references are being interpreted to read on that construction. Is the Office

conceding that Puhl does not disclose receiving service loading content, or authenticating service loading content; and if so, on what basis is the Office alleging that Puhl discloses a processor "configured to authenticate the service loading content," as alleged.

In view of the foregoing, should the Examiner continue to reject the claims as being unpatentable over the same or any other ground, Applicants respectfully request that the Office submit on the record clear and specific findings as to the construction being applied to the claims, an explanation of the references being cited against the claims, and how those references disclose recited features of the claims.

B. Claims 1-4, 10-13, 19-22 and 28-31 are Patentable

As indicated above, the present non-final Official Action rejects Claims 1-4, 10-13, 19-22 and 28-31 as being unpatentable over Puhl in view of Chou, and further in view of Moshir. As background, Puhl discloses a secure wireless electronic-commerce system that utilizes digital product certificates and digital license certificates. In the passage cited for disclosing aspects of the claimed invention, Puhl discloses a method of merchant (also referred to as an attribute authority – AA) delivering content to a client and receiving payment for that content. Initially, the merchant authenticates itself to the client by delivering a digital certificate to the client, which the client may verify via a certificate authority (CA). If the merchant is verified, the client delivers payment to the merchant for a content item, which the merchant then delivers to the client. As disclosed, the content item may comprise a software patch update, which may be delivered to the client without the user's consent or awareness of the update.

According to one aspect of the claimed invention, as reflected by independent Claim 1, a system is provided for downloading pushed content. As recited, the system includes a terminal comprising a processor configured to receive service loading content that identifies download content and has a digital signature. The processor is configured to authenticate the service loading content based upon the digital signature, and if the service loading content is authenticated, pull the download content to the terminal. In this regard, the processor is configured to authenticate the service loading content, and pull the download content, in response to receiving the service loading content and independent of interaction from a user of

the terminal. The processor is further configured to determine if an interruption occurs in pulling the download content such that the terminal receives a portion but less than all of the download content, and if an interruption occurs in receiving the content, recover the download content including receiving a remaining portion of the download content without also receiving at least part of the previously received portion.

As has been previously explained, in contrast to independent Claim 1, Puhl does not teach or suggest a terminal receiving service loading content, and in response thereto and without user interaction, authenticating the service loading content and pulling download content identified by the service loading content. That is, nowhere does Puhl disclose a terminal receiving service loading content that identifies download content, and also has a digital signature that is authenticated before the terminal pulls the download content. In the passage of Puhl cited in the Official Action (i.e., col. 13, lines 30-46; and col. 13, lines 47-67), for example, the client may receive a digital signature of a merchant to verify the merchant before paying for, and receiving, a content item from that merchant. In Puhl, however, the client does not receive the merchant's digital signature in service loading content that also identifies download content that is pulled by the client in response to receiving the service loading content and without user interaction (i.e., independent of interaction from a user), similar to independent Claim 1.

In another passage of Puhl cited in the Official Action (i.e., col. 8, lines 2-4, and 10-12), software on the client may be updated or upgraded without the user being aware of the upgrade, and without the user's consent. Even considering this passage, however, Puhl still does not teach or suggest that its client "pulls" download content in response to receiving service loading content (identifying the download content and including a digital signature) and without user interaction, as per independent Claim 1. Notably, the Official Action cites separate features of Puhl for allegedly corresponding to the recited terminal receiving service loading content and pulling content in response thereto. Nowhere has the Official Action cited or otherwise provided a coherent explanation of how Puhl supposedly teaches or suggests any manner by which its disclosed client receives service loading content and responds thereto in a manner satisfying independent Claim 1.

Similar to Puhl, Applicants respectfully submit that neither Chou nor Moshir, taken individually or in any proper combination, teaches or suggests the aforementioned features of independent Claim 1. That is, neither Chou nor Moshir, taken individually or in any proper combination, teaches or suggests a terminal receiving service loading content, and in response thereto and without user interaction, authenticating the service loading content and pulling download content identified by the service loading content, as per independent Claim 1. The Official Action cites Chou for allegedly disclosing "receiving authenticating service loading content." Official Action of Sep. 3, 2008, page 3.

Chou does disclose the concept of service loading content within the Wireless Application Protocol (WAP) architecture. *See* Chou, col. 6, lines 39-41 ("Service Loading (SL): this content type allows a user agent on a user device to load and execute a service, specified by a URI, without user intervention"). However, Chou does not further disclose any service loading content identifying download content and having a digital signature upon which the service loading content may be authenticated, as per independent Claim 1. Applicants note that two of the cited passages of Chou (i.e., col. 2, lines 10-14; and col. 3, lines 30-50) disclose an application server performing user authentication, and then pushing service content to an application layer broker. However, these passages do not teach or suggest that the application server authenticates service loading content based on its included digital signature, or in response to its receipt, pulling download content.

As to the final cited passage of Chou (i.e., col. 6, line 50 – col. 7, line 7), it discloses a wireless device receiving a service indication (SI) message, and pulling content by following a uniform resource interface (URI) included in the service indication message. Applicant respectfully submits, however, that a service indication message is not the same as service loading content, and in fact Chou describes the two types of messages as being different from one another. *See* Chou, col. 6, lines 34-41. Moreover, even with respect to a service indication message, Chou does not teach or suggest that it includes a digital signature that is authenticated by the wireless device that pulls content, similar to the service loading content of independent Claim 1. Rather, Chou discloses verifying a timestamp accompanying a URI to prevent unauthorized access to the service content linked by the URI.

Applicants therefore respectfully submit that independent Claim 1, and by dependency Claims 2-9, is patentably distinct from Puhl, Chou and Moshir, taken individually or in any proper combination. Applicants also respectfully submit that independent Claims 10, 19 and 28 recite subject matter similar to that of independent Claim 1, including at least the service-loading content and download-recovery features. Thus, Applicants also respectfully submit that independent Claims 10, 19 and 28, and by dependency Claims 11-18, 20-27 and 29-36, are patentably distinct from Puhl, Chou and Moshir, taken individually or in any proper combination, for reasons similar to those provided above with respect to independent Claim 1.

1. Claims 4, 13, 22 and 31

In addition to the foregoing, Applicants respectfully submit that various ones of dependent Claims 2-9, 11-18, 20-27 and 29-36 recite features further patentably distinct from Puhl and Landsman, taken individually or in any proper combination. For example, among other recitations, Claims 4, 13, 22 and 31 recite that the service loading content identifies an origin server associated with the download content, and that the terminal is configured to request and receive the download content from the origin server when the service loading content is authenticated.

The final Official Action alleged that Puhl discloses the features of Claims 4, 13, 22 and 31, but perplexedly appears to cite Applicant's application in support of this assertion. That is, in alleging that Puhl discloses service loading content identifying the origin server associated therewith, the Official Action cites "para. 0009 of the background of the applicant invention." Official Action of Dec. 31, 2007, page 5. To the extent the final Official Action intended to cite paragraph 0009 of the background of Puhl, Applicants note that the background section of Puhl does not have nine paragraphs or otherwise refer to any of the paragraphs of its background section as being the ninth paragraph. To the extent that the final Official Action did in fact intend to cite the background section of Applicants application as supposedly disclosing the aforementioned feature, Applicants respectfully submit that the Office has not met its burden of not only citing prior art disclosing every element of the claimed invention, but also providing an apparent reason to combine this feature with those allegedly disclosed by Puhl and Landsman to

teach the claimed invention. *See KSR Int'l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1740–41, 82 USPQ2d (BNA) 1385, 1396 (2007) (obviousness often requires determining whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue, and that to facilitate review, this analysis should be made explicit). At a minimum, however, Applicants submit that the ambiguity in the citation to a claimed feature attributed to Puhl affects Applicants' ability to effectively reply to the final Official Action. *See* MPEP § 710.06.

For at least the foregoing reasons, Applicants respectfully submit that the rejection of Claims 1-4, 10-13, 19-22 and 28-31 as being unpatentable over Puhl in view of Chou, and further in view of Moshir is overcome.

C. Claims 5, 14, 23 and 32 are Patentable

The Official Action also rejects Claims 5, 14, 23 and 32 as being unpatentable over Puhl in view of Chou and Moshir, and further in view of Chakravorty. As explained above, independent Claims 1, 10, 19 and 28, and by dependency Claims 2-9, 11-18, 20-27 and 29-36, are patentably distinct from Puhl, Chou and Moshir, taken individually or in any proper combination. Applicants respectfully submit that Chakravorty does not cure the deficiencies of Puhl, Chou and Moshir. That is, even considering Chakravorty, none of Puhl, Chou, Moshir or Chakravorty, taken individually or in combination, teaches or suggests the aforementioned service-loading content features, as recited by the claimed invention. And there is no apparent reason for the combination of Puhl, Chou, Moshir and/or Chakravorty to disclose the claimed invention. Thus, for at least the reasons given above with respect to independent Claims 1, 10, 19 and 28, Claims 5-9, 14-18, 23-27 and 32-36 are also patentably distinct from Puhl, Chou, Moshir and Chakravorty, taken individually or in any proper combination.

Applicants accordingly submit that the rejection of Claims 5, 14, 23 and 32 as being unpatentable over Puhl in view of Chou and Moshir, and further in view of Chakravorty, is overcome.

D. Claims 6, 7, 15, 16, 24, 25, 33 and 34 are Patentable

The Official Action rejects Claims 6, 7, 15, 16, 24, 25, 33 and 34 as being unpatentable

over Puhl in view of Chou, Moshir and Chakravorty, and further in view of Singh. As explained above, independent Claims 1, 10, 19 and 28, and by dependency Claims 2-9, 11-18, 20-27 and 29-36, are patentably distinct from Puhl, Chou, Moshir and Chakravorty, taken individually or in any proper combination. Applicants respectfully submit that Singh does not cure the deficiencies of Puhl, Chou, Moshir and Chakravorty. That is, even considering Singh, none of Puhl, Chou, Moshir, Chakravorty or Singh, taken individually or in combination, teaches or suggests the aforementioned service-loading content features, as recited by the claimed invention. And there is no apparent reason for the combination of Puhl, Chou, Moshir, Chakravorty and/or Singh to disclose the claimed invention. Thus, for at least the reasons given above with respect to independent Claims 1, 10, 19 and 28, Claims 5-9, 14-18, 23-27 and 32-36 are also patentably distinct from Puhl, Chou, Moshir, Chakravorty and Singh, taken individually or in any proper combination.

Applicants accordingly submit that the rejection of Claims 5, 14, 23 and 32 as being unpatentable over Puhl in view of Chou, Moshir and Chakravorty, and further in view of Singh, is overcome.

E. Claims 8, 9, 17, 18, 26, 27, 35 and 36 are Patentable

The Official Action rejects Claims 8, 9, 17, 18, 26, 27, 35 and 36 as being unpatentable over Puhl in view of Chou, Moshir and Singh. As explained above, independent Claims 1, 10, 19 and 28, and by dependency Claims 2-9, 11-18, 20-27 and 29-36, are patentably distinct from Puhl, Chou and Moshir, taken individually or in any proper combination. Applicants respectfully submit that Singh does not cure the deficiencies of Puhl, Chou and Moshir. That is, even considering Singh, none of Puhl, Chou, Moshir or Singh, taken individually or in combination, teaches or suggests the aforementioned service-loading content features, as recited by the claimed invention. And there is no apparent reason for the combination of Puhl, Chou, Moshir and/or Singh to disclose the claimed invention. Thus, for at least the reasons given above with respect to independent Claims 1, 10, 19 and 28, Claims 5-9, 14-18, 23-27 and 32-36 are also patentably distinct from Puhl, Chou, Moshir and Singh, taken individually or in any proper combination.

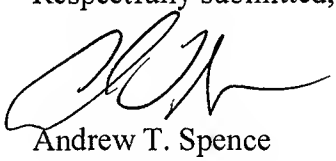
Applicants accordingly submit that the rejection of Claims 5, 14, 23 and 32 as being unpatentable over Puhl in view of Chou and Moshir, and further in view of Singh, is overcome.

CONCLUSION

In view of the remarks presented above, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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